

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LANDSCAPE CONSULTANTS OF TEXAS, INC.,
and METROPOLITAN LANDSCAPE MANAGEMENT, INC.,
Plaintiffs,

v. Civil Action No. 4:23-cv-03516
CITY OF HOUSTON, TEXAS, and
MIDTOWN MANAGEMENT DISTRICT,
Defendants.

DEPOSITION OF

MARLON MARSHALL

30(B)(6)

TAKEN ON

WEDNESDAY, JUNE 12, 2024

10:13 A.M.

HARRIS HILBURN & SHERER, LLP

1111 ROSALIE STREET

HOUSTON, TEXAS 77004

MARLON MARSHALL 30(B)(6)
75250

June 12, 2024

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DEPOSITION OF
MARLON MARSHALL

TAKEN ON
WEDNESDAY, JUNE 12, 2024
10:13 A.M.

THE REPORTER: We are on the record at 10:13 a.m.
And, Mr. Marshall, will you please raise your right
hand?

Do you affirm under penalty of perjury that the
testimony you're about to give will be the truth, the whole
truth, and nothing but the truth?

THE DEPONENT: Yes.

THE REPORTER: Thank you, sir.

Will each attorney please state their name and whom
they represent?

MR. THOMPSON: Josh --

MR. SILEO: I'm -- oh, go ahead.

MR. THOMPSON: I'm sorry. Joshua Thompson. I
represent Landscape Consultants of Texas and the Metropolitan
Landscape Management Incorporated.

MR. SILEO: And this is Brett Sileo, and I represent
Midtown Management District.

MR. DILLARD: This is Jarett Dillard, and I represent
the City of Houston.

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1 THE REPORTER: Thank you.

2 Counsel, please proceed.

3 MARLON MARSHALL, having been first duly affirmed to tell the
4 truth, was examined, and testified as follows:

5 EXAMINATION

6 BY MR. THOMPSON:

7 Q. Good morning.

8 A. Good morning.

9 Q. I'm Joshua Thompson. I'm from Pacific Legal
10 Foundation. Joined here by my colleague Anastasia Boden. As
11 you know, we represent the plaintiffs in this case, Landscape
12 Consultants of Texas and Metropolitan Landscape Management.
13 We're challenging the constitutionality of the Midtown
14 Management District DBE program or MWDBE program. Are you
15 familiar with the general nature of this lawsuit?

16 A. Yes.

17 Q. Can you give me your impression of what this lawsuit
18 is about?

19 A. It is about the MWDBE program for Midtown Management
20 District as it relates to Midtown -- Metropolitan Landscape
21 Management's pursuit of contracts with Midtown.

22 Q. Thank you. You've now been sworn in by our court
23 reporter. She's going to produce a transcript of our
24 conversation once it's completed. The purpose of this
25 deposition is for us to generate a written transcript, so I'm

1 going to do my best to ask clear questions.

2 If you don't understand any question, just ask me and
3 let me know and I will repeat it. Otherwise, if you answer,
4 I'm going to assume it's because you've understood the
5 question. Is that fair?

6 A. Yes.

7 Q. Is there any reason why you wouldn't be able to
8 testify fully and truthfully here today?

9 A. No.

10 Q. Can you state and spell your name for the record?

11 A. Marlon Marshall. M-A-R-L-O-N. Last name Marshall,
12 M-A-R-S-H-A-L-L.

13 Q. Have you ever been party to a deposition before?

14 A. No.

15 Q. So this is your first deposition?

16 A. Yes.

17 Q. As you know, our -- I'm sorry I can't get this
18 computer work because I don't know how to work an Apple.

19 As you know, our court reporter is taking down
20 everything you say. So it's important that you not nod or
21 shake your head that you produce audible answers affirmatively,
22 yes or no, so that everything can be written down.

23 Your attorney, Brett, here, may object from time to
24 time. That's just so he gets the objection for the record for
25 the judge to know. But unless he directs you not to answer,

1 you should just answer the question. All right.

2 Can you, tell me where do you work?

3 A. Midtown Redevelopment Authority.

4 Q. And what's your title there?

5 A. Senior Director of Engineering and Strategic
6 Development.

7 Q. And how did you come to work there?

8 A. I was hired in 2003.

9 Q. What qualifications got you that job?

10 A. I have experience as an engineer. I --
11 professionally I am trained in engineering and there was an
12 opportunity for engineering-related work.

13 Q. So you worked at the Redevelopment Authority for over
14 20 years?

15 A. Yes.

16 Q. Has your title been the same there the entire 20
17 years, or have you progressed through different job titles?

18 A. It has not been the same.

19 Q. Can you run me through how your career has progressed
20 there?

21 A. I was initially hired as a project engineer and then
22 I moved to project manager and then program manager, and then
23 to director of engineering, and then to senior director of
24 engineering and strategic planning.

25 Q. And that is where you are --

1 A. That's my current role.

2 Q. And what does that role entail? What is your day-to-
3 day work?

4 A. My day-to-day work involves managing a group of
5 architectural engineering consultants as it relates to the
6 redevelopment of the Midtown Tax Increment Reinvestment zone.
7 I also have responsibility for service and maintenance and
8 urban planning as it relates to the Midtown Management
9 District.

10 Q. Thank you. I'm going to introduce our first exhibit
11 today. This is our deposition notice for you.

12 Here's one for the court reporter. And here's one
13 for you, one for your attorney. I'm sorry.

14 (WHEREUPON, Exhibit 1 was marked for identification.)

15 MR. DILLARD: I have one.

16 MR. THOMPSON: You got one.

17 MR. DILLARD: No, I have.

18 MR. SILEO: I don't think this is a surprise.

19 MR. THOMPSON: Yeah. Right.

20 BY MR. THOMPSON:

21 Q. Could you take a -- or have you seen this document
22 before?

23 A. Yes.

24 Q. And on the second page there, it says that there are
25 certain matters to be examined. Do you see those matters?

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1 A. Yes.

2 Q. Do you feel that you are prepared to testify to those
3 matters today?

4 A. Yes.

5 Q. Great. You mentioned previously something that I
6 need clarification on. You mentioned three things. There's
7 the Midtown Management District, the Midtown Redevelopment
8 Authority, and then there was the -- the Zone. I forget
9 exactly what you said. Can you help me understand how those
10 three different entities interrelate in the different roles and
11 jobs that they have?

12 A. The Midtown Tax Increment Reinvestment Zone was
13 created by the City of Houston in 1994 to redevelop an area
14 that was designated in the Midtown area. The Midtown
15 Redevelopment Authority was formed -- was created to administer
16 the daily operations and business of the Tax Increment
17 Reinvestment.

18 The Midtown Management District was created in 2000
19 as an avenue to compliment the Midtown TIRZ to provide quality
20 of life type of services in the zone -- in the district.
21 Services such as public safety, marketing services and
22 maintenance and urban planning.

23 Q. You said TIRZ. What are TIRZ?

24 A. Taxi Increment Reinvestment Zone. It's an acronym.
25 The way it is created a base value of the property values

1 within that designated zone, is set. And then as development
2 increases in the zone, the tax increment generated from those
3 properties is then reinvested into that zone.

4 Q. Do all three of those entities still exist today?

5 A. Yes.

6 Q. Do -- strike that.

7 How does the authority work? Does one have authority
8 over the other or are they all independent and have their own
9 sphere of authority?

10 A. They all -- the TIRZ and the Redevelopment Authority
11 share a board of directors. Midtown Management District
12 operates independently and has its own board of directors.
13 Midtown -- Midtown Management District currently has an
14 agreement with Midtown Redevelopment Authority to handle day-
15 to-day administration of the management district.

16 Q. So if I understand correctly, the Midtown Management
17 District handles day-to-day operations for the Midtown
18 Redevelopment Authority?

19 A. No, sir.

20 Q. I'm sorry, could you explain again?

21 A. The Midtown Redevelopment Authority has entered into
22 an agreement with the Midtown Management District to administer
23 the daily operations of the Midtown Management District.

24 Q. So I got it completely backwards. The Midtown
25 Redevelopment Authority has entered into an agreement to handle

1 the day-to-day operations of the Midtown Management District?

2 A. Yes.

3 Q. And I heard you say that you are employed with the
4 Midtown Redevelopment Authority. So what is your relationship
5 to the Midtown Management District?

6 A. I work with the Service and Maintenance Committees
7 and the Urban Planning Committee for the most part.

8 Q. What is the relationship between Midtown Management
9 District and the City of Houston?

10 A. The Midtown Management District works with the City
11 of Houston's administration as it relates to any projects that
12 they may try to implement. So they follow the City of
13 Houston's standards, ordinances, and laws to implement those
14 projects.

15 Q. Could you give me an example of a project that the
16 City of Houston would have the Midtown Management District
17 implement?

18 A. For public safety services, the Midtown Management
19 District works closely with the Houston Police Department in
20 administering civility ordinances as it relates to safety
21 issues in Midtown.

22 Q. Does that mean that Midtown Management District has
23 its own police force?

24 A. No.

25 Q. So how does the Midtown Management District enforce

1 **civility ordinances?**

2 A. They have contractual agreements with law enforcement
3 agencies.

4 **Q. And what do those contractual agreements allow**
5 **Midtown Management District to do to enforce those agreements?**

6 A. I don't know all the details.

7 MR. THOMPSON: Okay.

8 I'm going to introduce my second exhibit. This is
9 the Administrative Policies and Procedures manual from the
10 Midtown Management District.

11 (WHEREUPON, Exhibit 2 was marked for identification.)

12 THE REPORTER: And I can get him my copy for the
13 moment.

14 MR. THOMPSON: Okay.

15 THE REPORTER: So that Mr. Dillard may have a copy.

16 MR. DILLARD: That'd be great. Thank you.

17 THE REPORTER: Mm-hmm. Yes, sir.

18 MR. THOMPSON: And just off the record, real quick.
19 Are we labeling these as Exhibit 2?

20 THE REPORTER: Sorry. We're off the record at 10:25.

21 (WHEREUPON, a recess was taken.)

22 THE REPORTER: Okay. We are on the record at 10:25
23 a.m.

24 BY MR. THOMPSON:

25 **Q. Have you had a chance to see this document?**

1 A. I've seen it. I have not reviewed it.

2 Q. Have you ever -- you've seen it before today?

3 A. Yes.

4 Q. Can you describe what this document is?

5 A. It's the Midtown Management District Administrative
6 Policies and Procedures manual.

7 Q. Do you know how this manual differs from say, the
8 bylaws of the Midtown Management District?

9 A. No.

10 Q. Do you know the scope of this manual?

11 A. Not completely.

12 Q. Okay. I'd like you to turn to page 5. It's on the
13 bottom. It's MMDD00168. This talks about the officers of the
14 Midtown Management District. And Section A notes that there's
15 a chair, a vice chair, a secretary, an assistant secretary,
16 treasurer, and any other officers the board considers
17 necessary. Do you see that provision?

18 A. Yes.

19 Q. Can you tell me what the various titles denote for
20 responsibilities with the Midtown Management District?

21 A. No, not all of them.

22 Q. Can you tell me what the chair of the Midtown
23 Management District's duties are?

24 A. I can tell you some of them.

25 Q. Would you please tell me some of them?

1 A. The chair administers monthly board meetings, leads
2 monthly board meetings, and consults with other board members
3 on management district matters.

4 THE REPORTER: I'm sorry, what was that?

5 THE DEPONENT: The chair -- the chair leads and
6 administers monthly board meetings and consults with other
7 board members on matters.

8 BY MR. THOMPSON:

9 Q. Is the chair a board member?

10 A. Yes.

11 Q. Do -- strike that.

12 Are each of these positions held by separate
13 individuals?

14 A. I'm unsure.

15 Q. Okay. It also says that there may be other officers
16 that the board considers necessary. Do you know if there are
17 other officers currently on the Midtown Management District?

18 A. I'm not sure.

19 Q. If you move down to section 9 on the same page, it
20 talks about standing committees. It says that there's the
21 nominating and executive committees and at any time the
22 chairman may appoint interim committees. Do you know if there
23 are any other committees besides those two, currently for the
24 Midtown Management District?

25 A. Yes.

1 Q. And what committees currently exist?

2 A. Public Safety, Marketing, and Economic Development.

3 Q. What does the Economic Development Committee -- what
4 is their scope of authority or what do they talk about?

5 A. I don't -- I'm not involved in the day-to-day of the
6 committee. So I don't know.

7 Q. Are you involved in the day-to-day of any other
8 committees?

9 A. Service and Maintenance, and Urban Planning.

10 Q. And what is the scope of authority of the Service and
11 Maintenance Committee?

12 A. Service and Maintenance Committee is responsible for
13 the maintenance and upkeep of public right-of-way -- public
14 right of ways and public facilities within the Midtown
15 District.

16 Q. What are public right of ways?

17 A. City-owned properties, government-owned properties
18 that are not properties of private property owners. So
19 normally we describe it as area between the sidewalk and the
20 curb generally.

21 Q. Got you. You also mentioned with the Urban Planning
22 Committee --

23 A. Yes.

24 Q. -- that you -- what is the scope of its authority?

25 A. The Urban Planning Committee works closely with the

1 redevelopment -- Midtown Redevelopment Authority on planning
2 activities within the Midtown District. The Urban Planning
3 Committee also works with City of Houston's Planning Department
4 to implement city planning initiatives within Midtown.

5 **Q. Can you give me an example of a city planning**
6 **initiative that -- that authority -- that that committee works**
7 **on?**

8 A. Walkable Places initiative was an initiative by the
9 City of Houston's Planning Department. And the Midtown
10 Management District worked with City of Houston to shape and
11 Engage Midtown Community as that initiative came together.

12 **Q. Does the City of Houston provide funding for that**
13 **initiative?**

14 A. No.

15 **Q. How --**

16 A. Correction, City of Houston provides funding for
17 Walkable Places. City of Houston does not provide funding for
18 Midtown Management District Urban Planning Committee.

19 **Q. Understood. If the Urban Planning Committee has an**
20 **initiative with the City of Houston, is it always the case that**
21 **the City of Houston will provide funding for that initiative?**

22 MR. DILLARD: Objection, form.

23 THE DEPONENT: No.

24 BY MR. THOMPSON:

25 **Q. Do you know of particular initiatives that the City**

1 of Houston does not provide funding for?

2 A. Yes.

3 Q. Okay. Could you tell me what those are?

4 A. There was a Safe Streets Road for All initiative that
5 the city did not provide funding for.

6 Q. Do you know of any others?

7 A. Yes.

8 Q. Could you tell me that one?

9 A. Pedestrian safety enhancements, crosswalk
10 improvements.

11 Q. Are there any others that you can think of?

12 A. Not at this time.

13 Q. I want to turn to page 8 of Exhibit 2. There it
14 talks -- on section 13 of the Disadvantaged Business Enterprise
15 Program. Do you see where I'm at?

16 A. Yes.

17 Q. I'm just going to read this out loud so we're on the
18 same page.

19 "The -- goal, the district shall attempt to stimulate
20 the growth of disadvantaged businesses inside the boundaries of
21 the district by encouraging the full participation of
22 disadvantaged businesses in all phasements (sic) of its
23 procurement activities and affording those disadvantaged
24 businesses a full and fair opportunity to compete for district
25 contracts. Without limiting the generality of the foregoing,

1 the district will objectively demonstrate good faith efforts to
2 award at least 24 percent of the value of professional
3 services, 17 percent of construction lettings, and 11 percent
4 of purchasing to disadvantaged businesses."

5 Those percentages, 24 percent on professional
6 services, 17 percent of construction lettings, and 11 percent
7 of purchasing, where did those numbers come from?

8 A. I don't know.

9 Q. When it says that the district will objectively
10 demonstrate good faith efforts, do you know what that means?

11 A. Generally, yes.

12 Q. Can you explain what your general impression of that
13 phrase is?

14 A. Good faith efforts or documented efforts to show that
15 you've made attempt to include all companies in your processes.

16 Q. How can a -- how can a -- a firm demonstrate that it
17 has made an effort to include all businesses?

18 A. One way that they can demonstrate is providing
19 documentation that they've shared information about a
20 procurement with local agencies such as general contracting
21 agencies, professional organizations, those type of things.

22 Q. Would sharing -- sharing it with those professional
23 court agencies suffice to demonstrate good faith effort
24 compliance?

25 A. There are a number of ways that you can suffice. I

1 don't remember all of them -- that you can show compliance. I
2 don't remember all of them. That's one of them.

3 Q. But that alone would be enough to show compliance?
4 There may be other ways, but that is at least one way to show
5 compliance?

6 A. That's one way. I'm not sure if that's enough.

7 Q. Okay. At the beginning of that phrase, it says, "The
8 district shall attempt to stimulate the growth of disadvantaged
9 businesses inside the boundaries of the district." Is it your
10 understanding that the Disadvantaged Business Enterprise
11 program is limited to stimulating the growth of disadvantaged
12 businesses inside the boundaries of the district?

13 A. That is not my understanding.

14 Q. Are there disadvantaged businesses inside the
15 boundaries of the district?

16 A. I'm unsure.

17 Q. Moving to B, where it defines what a disadvantaged
18 business means. Do you see where I'm at?

19 A. Yes.

20 Q. I'll give you a moment to read that so my voice
21 doesn't get hoarse. Just let me know when you've had a chance
22 to read that.

23 A. Read.

24 Q. Thank you. So I understand this provision to be
25 defining how the Midtown Management District determines what a

1 disadvantaged business is. Would you agree with me on that?

2 A. Can you please restate your question?

3 Q. Sure. I understand B(1) here, and frankly B(1)
4 through 4 -- I know you haven't read 4, but at least B(1) is
5 one way that the Midtown Management District understands
6 whether a disadvantaged business qualifies as a DBE?

7 A. Yes, that is one way.

8 Q. Okay. It says, "51 percent of all classes of shares
9 of the stock are owned by one or more persons who are socially
10 disadvantaged." What is your understanding what social
11 disadvantage means?

12 A. My understanding as it relates to this clause is
13 because of their identification as members of certain groups
14 that have suffered effects of discriminatory practices or
15 similar insidious circumstances over which they have no
16 control.

17 Q. Including, and it lists certain racial groups after
18 that. As you understood then, does that mean that those
19 groups, racial groups that are listed at the end of B(1) must
20 have actually suffered the effects of discriminatory practices
21 or similar insidious circumstances?

22 A. Please restate that.

23 Q. Sure. I understood you to define social disadvantage
24 as identification as members of certain groups that have
25 suffered the effects of discriminatory practice or other

1 insidious circumstances over which they have no control. And
2 then it lists the racial groups.

3 My question is, do the members of those certain
4 racial groups have to have suffered the effects of
5 discriminatory practices or other insidious circumstances over
6 which they have no control in order to qualify as a DBE?

7 A. That's unclear to me.

8 Q. Let me ask it a little bit differently. Is
9 membership in that racial group alone sufficient to satisfy the
10 DBE definition?

11 A. That is not my understanding.

12 Q. So it's your understanding that in addition to being
13 a member of that racial group, the member must also show that
14 he or she had suffered the effects of discriminatory practices
15 or similar insidious circumstances?

16 MR. SILEO: Objection, form.

17 THE DEPONENT: That is not my understanding.

18 BY MR. THOMPSON:

19 Q. Okay. Now I'm unclear, because I thought you had
20 said that it is not your understanding that membership in the
21 group is sufficient standing alone. Would you like to change
22 that answer or do you agree that there's a -- an additional
23 requirement?

24 A. I'm going to reread this clause.

25 Q. Yeah. Take your time.

1 A. It is unclear to me on the intent after rereading it.

2 Q. Okay.

3 A. Whether that's the case.

4 Q. That's fair. It lists, I see three racial groups,
5 African Americans, Hispanic Americans, Asian Pacific Americans,
6 one I suppose, political classification, American Indians and
7 women. Do you know if there are any other racial or political
8 classifications that qualify for DBE status?

9 MR. SILEO: Objection, form.

10 THE DEPONENT: I don't know.

11 BY MR. THOMPSON:

12 Q. The phrase, similar insidious circumstances, do you
13 know what that means?

14 A. No.

15 Q. All right. Turning to the next page on the
16 certification, C. C(1) state certification from a variety of
17 what looks like to me, Texas or Houston governmental entities.
18 Do you know if that is the exhaustive lists -- list of entities
19 that the Midtown Management District will accept documentation
20 from?

21 A. That is not.

22 Q. Okay. What are the other entities?

23 A. I don't recall the exact name, but there is another
24 woman-based entity that is accepted.

25 Q. Would that woman-based entity only satisfy the WBE

1 component of the law?

2 MR. SILEO: Objection, form.

3 THE DEPONENT: I'm not sure.

4 BY MR. THOMPSON:

5 Q. On C(2), it states that, "If the businesses are not
6 certified by one of the entities listed above the business must
7 provide the following information." Are you aware of any DBEs
8 that Midtown Management District has contracted with that it's
9 satisfied the proof of DBE status through C(2) as opposed to
10 C(1)?

11 A. No.

12 Q. Moving down on that same page, under D, "The district
13 shall attempt to stimulate participation of disadvantaged
14 businesses by the following." Do you see where I'm at?

15 A. Yes.

16 Q. It says that, "The district will familiarize itself
17 with disadvantaged businesses with relevant skills and it will
18 particularly know businesses located within the district." How
19 does the district document that it does that?

20 A. I don't know.

21 Q. And under 2, it will identify disadvantaged
22 businesses, which will be mailed requests for qualifications,
23 proposals, or bids. Does the district do that?

24 A. Yes. For some that they're aware of. And in these
25 days, it's electronically mailed.

1 Q. On the next page at the top it says, "The district
2 will make itself available to answer questions of DBEs and to
3 provide information as to how a firm may effectively compete
4 for work in the district." Do you know how the district
5 effectuates that provision?

6 A. The district has participated in procurement events
7 that were targeted for disadvantages -- disadvantaged
8 businesses that were invited to those events.

9 Q. And 4 says the district keeps records of all these.
10 Are you -- are you aware of the records of these?

11 A. No.

12 Q. And 5 says that the district will review its
13 disadvantaged business program each year. Are you aware of --
14 of -- if the district has done that?

15 A. The district has entered into an agreement with
16 Midtown Redevelopment Authority since this was drafted to
17 administer and comply with laws of the state. And the Midtown
18 Redevelopment Authority has administrative policy that is
19 reviewed annually.

20 Q. Does that mean that the district does not review its
21 DBE program each year?

22 A. I'm unsure if it means that.

23 Q. Do you know -- strike that.

24 Are you aware of any review that the district has
25 undertaken for its disadvantaged business program last year?

1 A. No.

2 Q. And then on E, "Reporting, the personnel shall
3 complain --"

4 A. Excuse me. Excuse me. I would like to correct that.

5 Q. Of course.

6 A. In its agreement with Midtown Redevelopment
7 Authority, the program was reviewed last year.

8 Q. What did that review consist of?

9 A. I'm not sure.

10 Q. Is that review documented somewhere?

11 A. It is documented in minutes, from board meetings for
12 approval of the document.

13 Q. Approval of the document. Which document are you
14 referring to?

15 A. The Midtown Redevelopment Authority's policies and
16 procedures.

17 Q. Back under reporting it says that, "Personnel should
18 compile activities, results into an annual report." If you
19 read on it says that, "Report will be prepared 90 days after
20 the end of each fiscal year." To your knowledge, does Midtown
21 Management District produce such reports?

22 A. Not to my knowledge.

23 Q. Okay. Are you doing okay? I'm going to move on to a
24 different topic if --

25 A. Okay.

1 Q. We can take a break, if you need it. Otherwise, we
2 can keep going.

3 A. I'm okay.

4 Q. Okay. I want to share with you Exhibit, I think
5 we're on 3. It actually is Exhibit 3 because this is from our
6 complaint. So luckily the tab is correct.

7 (WHEREUPON, Exhibit 3 was marked for identification.)

8 THE REPORTER: I'm going to keep these right here,
9 but if you need to re-reference, you're welcome to.

10 BY MR. THOMPSON:

11 Q. Have you had a chance to see what this document is?

12 A. Yes.

13 Q. And what is it?

14 A. Midtown Management District invitation to bid field
15 maintenance services project.

16 Q. Can you describe generally what is an invitation to
17 bid?

18 A. A procurement activity to invite potential firms to
19 bid on its services.

20 Q. What this is a Field Maintenance Services Project.
21 What other types of project does Midtown Management District
22 solicit bids for?

23 A. Well, Baldwin Park and Glover Park landscape
24 maintenance. Website design services. Those are two that come
25 to mind.

1 Q. Do you have a general sense of how many invitations
2 to bid Midtown lets each year?

3 A. It varies.

4 Q. Would you say it's more than 10?

5 A. No.

6 Q. So this is a Field Maintenance Services Project
7 invitation to bid. Do you know generally what -- what is the
8 Field Maintenance Services Project?

9 A. It is the landscaping maintenance services, removal
10 of trash, debris and other untidy objects in the public rights
11 of way of the Midtown District.

12 Q. On page 2, it is discussing information that these
13 bids need to include and it includes a company profile. Do you
14 see where I'm at?

15 A. Yes.

16 Q. On number 2, it says. "Age of company, year of
17 incorporation, number of employees." What does Midtown use
18 that information for?

19 A. To evaluate the bids received.

20 Q. And how does the age of a company, year of
21 incorporation, number of employees and revenues related to the
22 delivery of landscape management, how is that evaluated?

23 A. Can you restate your question?

24 Q. Yeah. I'm trying to understand is how those
25 different criteria would affect a firm's bid? Like what would

1 be viewed favorably, what would be viewed negatively, those
2 types of understandings. Perhaps I can ask --

3 A. That is just --

4 Q. Let me try asking a little bit differently. On age
5 of a company, would the -- would a company that's been
6 established for let's say 10 years be viewed more favorably by
7 Midtown than a company that's been established for one year?

8 A. That -- that is just one component of the criteria to
9 understand their organizational -- their total organization.
10 So it -- it is not the intent to be assessed independently.

11 Q. But the age of the company is something that Midtown
12 wants to know.

13 A. Yes.

14 Q. Why does it want to know that?

15 A. So that it can compare it to the other bids in
16 determining which firm is the most responsive and acceptable
17 bid for its procurement process?

18 Q. I certainly understand that each of these, 1 through
19 7, aren't dispositive in their own right and aren't the
20 decision maker. Yet I would think that the reason Midtown is
21 asking for this information is, as you say, they want to know
22 it. What I'm trying to get at is, how do these criteria affect
23 a company's bid.

24 So with that in mind, let me try to ask it a little
25 bit differently. Does Midtown prefer to contract with

1 companies that are more established or companies that are new
2 to the business?

3 A. To my knowledge, there is no preference.

4 Q. Is there a preference for a number of employees?

5 A. Not to my knowledge.

6 Q. Is there a preference for a number of current
7 customers?

8 A. Not to my knowledge.

9 Q. Is there a preference for experience doing that type
10 of work?

11 A. Yes.

12 Q. Moving down, do you see where it says summary of
13 proposed approach?

14 A. Yes.

15 Q. Can you explain how Midtown uses the information
16 provided there?

17 A. And use as part of -- as part of the overall
18 evaluation of a bid that -- to determine if a firm's proposed
19 approach can differentiate it from competitors.

20 Q. Just so we can -- just briefly, if you look at page
21 4, it has the evaluation criteria, financial consideration,
22 organizational qualifications, and proposed approach, 15
23 points. Is this -- now back to page 2, is this summary of
24 proposed approach, how they calculate those 15 points?

25 A. Yes.

1 Q. Okay. So can you explain to me like what would a
2 proposed approach that receives a higher score look like versus
3 a proposed approach that receives a lower score look like?

4 A. Proposed approach that receives a higher score may
5 entail providing value-added services or recommending services
6 to perform the work more efficiently as opposed to a bid that
7 may not include those standards or proposals -- proposed
8 services, which may make the work less efficient.

9 Q. So in terms of landscaping services, how could a
10 proposed approach demonstrate its -- would do the work more
11 efficiently?

12 A. They may recommend use of certain types of equipment.
13 They may propose performing the services in a different manner
14 or they may propose using a different number of workers to
15 perform.

16 Q. Underneath that, it lists references. How does
17 Midtown use the references that are provided when evaluating
18 bids?

19 A. Use the references to understand the firm's
20 experience in this line of business and to potentially get a
21 better understanding of how they perform their work.

22 Q. So moving back to page 4, in those four different
23 point allocations, where would references fall? Well, I guess
24 --

25 A. There's qualifications in references.

1 Q. I suppose I should read it better. That would be
2 helpful. When we were talking prior on page 2 about the
3 company profiles, does that go into organizational
4 qualifications?

5 A. Yes.

6 Q. Financial considerations, I imagine one of them is
7 the bid number, whether it's higher or lower. What other
8 financial considerations does the management district consider?

9 A. That's mostly -- there's a bid form that's required
10 to be submitted, and that's the information that's considered
11 for financial considerations. Exhibit D.

12 Q. On the top of page 4, do you see where it says,
13 "Participation of minority women in Disadvantaged Business
14 Enterprises"?

15 A. Yes.

16 Q. I'll give you a minute to read that and let me know
17 when you're finished.

18 A. I've read it.

19 Q. I see there the Houston Women's Business Council. Is
20 that the organization that you were referring to earlier when
21 you talked about the women's organization?

22 A. Yes.

23 Q. I also noticed that unlike the prior document, which
24 you can refer to if you -- if you'd like, there are only three
25 entities listed here. So example -- for example, Harris County

1 is not listed. Can you explain the discrepancy in those two
2 documents?

3 A. I cannot.

4 Q. All right. We can move -- move to, it's Exhibit B, I
5 believe in the same document. Do you see where it says, "2.02
6 tree and shrub maintenance"?

7 A. Yes.

8 Q. And number 1 is, "All suckers shall be continually
9 removed"?

10 A. Yes.

11 Q. What's a -- what's a sucker?

12 A. It's items that grow on specific trees or shrubs and
13 that are considered unattractive or invasive.

14 Q. And in a similar vein, if you turn the page, on 2.04
15 A(1), it talks about chinch bugs. I wonder what a chinch bug
16 is.

17 A. It's an insect that is normally considered to be not
18 advantageous to plant material.

19 Q. Okay. Thank you.

20 I'm going to introduce now what I believe is Exhibit
21 4.

22 (WHEREUPON, Exhibit 4 was marked for identification.)

23 MR. SILEO: Thank you.

24 BY MR. THOMPSON:

25 Q. Do you know what this document is?

1 A. Yes.

2 Q. What is it?

3 A. It is a summary of the evaluation of the bids
4 received for Midtown Management District field service --
5 maintenance services project from November 2022.

6 Q. And that field maintenance service project was the
7 prior document that we were reviewing?

8 A. Yes.

9 Q. Do I understand that only six firms bid on that
10 project?

11 A. Yes.

12 Q. Now I see that the assigned weight is -- corresponds
13 to the document we reviewed of the different points for each
14 category. And then the end it says, "Average total." I'm
15 wondering what the average is or is that just adding up the
16 numbers?

17 A. The average total is the total of those columns added
18 together, of each of those columns added together.

19 Q. That's what I thought. But then if you look at --
20 let's take that first one, Four Eleven LLC. If you just add up
21 the last digit in each category, you would think would end with
22 a one, but it ends with a zero. Do you know why that would be?

23 A. Potentially rounding within the program.

24 Q. Under the financial consideration category, I see
25 that Four Eleven received the highest score of 50. Does that

1 mean that it had the lowest dollar bid?

2 A. Yes.

3 Q. Is it the case that the lower dollar bid -- lowest
4 dollar bid, gets the full 50 points?

5 A. Yes.

6 Q. And are the scores of the other bids then calculated
7 based on the lowest bid?

8 A. Yes.

9 Q. And do you know the calculation that's undertaken to
10 arrive at, let's say, take Metropolitan Landscape, the next one
11 down at 46.14. Why it was 3.86 points fewer than the prior
12 one?

13 A. It is a formula, is based on its relation in
14 comparison to the lowest bid.

15 Q. Mm-hmm.

16 A. So for example, I would have to review the formula to
17 make sure I remember it correctly, but it takes the lowest bid
18 and the value of the lowest bid and determines what percentage
19 it is as it relates to that low bid and assigns a number based
20 on the other contractors' bills.

21 Q. Mm-hmm. When you move over to organizational
22 qualifications and references, 25 points is the maximum one can
23 receive. How are the various numbers there determined?

24 A. This is a -- an average of the points awarded by each
25 of the evaluation committee members for that particular

1 category.

2 Q. That's helpful. How many evaluation committee
3 members are there?

4 A. I don't remember specifically, but it's at least
5 five.

6 Q. So if I understand you correctly, and please correct
7 me if I'm wrong, each of these committee members will give a
8 number 25 or less. We'll add those all up divided by the
9 number of committee members, and that's going to produce the
10 score here.

11 A. Actually, you -- this process, you are required to
12 score each bid from 0 to 100. And then that average is then 25
13 percent of that number is taken.

14 Q. So the committee members are assessing the entirety
15 of the bid or --

16 A. So in each -- for example, for organizational
17 qualifications and references, you score each bid from 0 to
18 100.

19 Q. I see.

20 A. And if you -- if they were to receive 100, they would
21 receive 25 points in that category. They score less than 100,
22 they receive the proportion of the 25 points as it relates to
23 100.

24 Q. I understand. Thank you. Is proposed approach done
25 similarly?

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1 A. Yes.

2 Q. And how is the MWDBE score calculated?

3 A. The same way.

4 Q. Those scores don't look like an average to me. They
5 look like you either get it or you don't.

6 A. It's at the discretion of the committee member.

7 Q. Okay. So if I understand you correctly, a DBE or a
8 WBE could qualify based on being recognized by the Woman
9 Business Council as a certified WBE and yet not received the
10 10-point bonus here based on the discretion of the committee
11 members?

12 A. It's not opponents. It's part of -- it's not a 10-
13 point bonus. It is 10 points of the overall 100 total points
14 of the evaluation criteria.

15 Q. Yeah, I -- I understand. Assume a WBE submitted a
16 proposal for the Field Maintenance Services Project. They're
17 certified by the Woman Business Council of Houston. Do they
18 automatically get the 10 points for their bid or -- based on
19 their certification? Or do the committee members have
20 discretion on whether to award that 10 points?

21 A. Committee -- committee members have discretion.

22 Q. So not all certified MWB -- MWDBEs will necessarily
23 receive the 10 points as part of their bid?

24 A. It's not mandatory.

25 MR. THOMPSON: Thank you. Okay. Moving on to -- are

1 you -- do you need a break? Are you doing okay? We can take a
2 quick break.

3 THE DEPONENT: Okay.

4 THE REPORTER: Okay. We are off the record at 11:20
5 a.m.

6 (WHEREUPON, a recess was taken.)

7 THE REPORTER: Okay. Go ahead. I apologize.

8 MR. THOMPSON: I will be introducing another exhibit.
9 This is which one? 5?

10 MR. SILEO: Number 5.

11 MR. THOMPSON: Okay. This is yours.

12 MR. SILEO: Thank you.

13 MR. DILLARD: Thank you.

14 (WHEREUPON, Exhibit 5 was marked for identification.)

15 BY MR. THOMPSON:

16 **Q. Do you know what this document is?**

17 A. Yes.

18 **Q. Have you seen it before?**

19 A. Yes.

20 **Q. Can you explain what it is, generally?**

21 A. It's a -- a summary of the overall goal calculation
22 for disadvantaged business entities as it relates to projects
23 that are -- have received funding from the Federal
24 Transportation Administration.

25 **Q. Can you explain the difference between the DBE goals**

1 that are tied to federal transportation assisted contracts and
2 the MWDBE goals that are not tied to federal dollars?

3 A. The MWDBE program is -- more closely reflects state -
4 - state and City of Houston requirements versus the Federal
5 Transit Administration, is designed around federal
6 requirements.

7 Q. Does the Midtown Management District calculate goals
8 differently for the different programs?

9 A. Yes.

10 Q. Can you explain how those calculations differ?

11 A. The Federal Transit Administration has its own set of
12 requirements when calculating disadvantage enterprises goals
13 and the state and City of Houston has its own policies and
14 procedures as it relates. So I don't have those exact details,
15 but generally those are.

16 Q. Do you know any particular detail that differs in the
17 two calculations?

18 A. No.

19 Q. If you turn to the -- I'm sorry, this is double-
20 sided, but the last page where there's like a little graph
21 there with adjusted DBE goal. Do you see where I'm at?

22 A. Yes.

23 Q. Underneath that it says that, "Midtown will set the
24 DBE goal at 10.5 percent based on past performance and then
25 monitor how much participation occurs over the next three

1 years. This DBE goal will be 100 percent race neutral based on
2 past performance." What is your understanding of what 100
3 percent race neutral means?

4 A. I'm not completely familiar with that term. This --
5 this goal was calculated by a consultant. We used the
6 government corporation.

7 Q. Do you know generally the difference between race
8 neutral participation and race conscious participation?

9 A. Generally.

10 Q. What is your general understanding of those two
11 terms?

12 A. Race neutral means race is not considered. Race
13 conscious means race is considered.

14 Q. And as Midtown's DBE program with the Federal
15 Transportation Administration assisted contracts is race
16 neutral. That means that Midtown Management District does not
17 consider race in awarding contracts that are federally funded
18 in that way. Is that correct?

19 A. That is my understanding, based on the definition.

20 Q. With regards to the MWDBE programs goals, do you know
21 if Midtown achieves any of those through race neutral means?

22 A. I don't know.

23 Q. Do you know if the MWDBE program has a race neutral
24 component?

25 A. I don't know.

1 MR. THOMPSON: I am going to move on to a new
2 exhibit. This will be Exhibit 6.

3 There you go.

4 (WHEREUPON, Exhibit 6 was marked for identification.)

5 MR. SILEO: All right. And it's double-sided, so --

6 THE DEPONENT: Yeah, I see.

7 MR. THOMPSON: 5 is double-sided.

8 THE DEPONENT: Right.

9 MR. THOMPSON: This 6 should not be.

10 THE DEPONENT: Do I have yours or is -- these copies
11 are the same?

12 MR. THOMPSON: Or did I give you something
13 incorrectly? Did I give you two of those?

14 THE DEPONENT: I think maybe.

15 MR. THOMPSON: I'm sorry about that.

16 THE REPORTER: Okay.

17 MR. SILEO: Well, I think -- okay.

18 THE DEPONENT: I'm not sure.

19 MR. SILEO: I think -- yeah.

20 THE DEPONENT: I have this one.

21 MR. SILEO: Okay.

22 THE DEPONENT: Seems to be the same as that.

23 MR. SILEO: Okay.

24 BY MR. THOMPSON:

25 Q. It's only about three pages, so.

1 Okay. Have you seen this document before?

2 A. Yes.

3 Q. And what is it?

4 A. Midtown Management District's Answers and Objections
5 to Plaintiff's First Set of Discovery.

6 Q. Now on the answers to interrogatories, number 1, that
7 has your name there, doesn't it?

8 A. Yes.

9 Q. So it's fair to say you assisted in the compilation
10 of the answers?

11 A. Yes.

12 Q. I want to point you to question number 4 where it
13 says, "Identify each compelling interest you contend is
14 advanced by the MWDBE program and/or 10-point bonus." Can you
15 read that answer? And let me know when you finished.

16 A. I've read it.

17 Q. Okay. I want to just sort of go through this line by
18 line. The beginning it says, "The district followed the
19 directive established by the Texas State Legislature when the
20 legislature enacted Texas Government Code Section 375.222."

21 In what way do you believe this statute directs the
22 district to establish the MWDBE program?

23 A. I don't have the statute in front of me, so I don't
24 have the exact terms, but it had -- it includes language that
25 says the management district shall establish disadvantaged

1 business program.

2 Q. We talked just a second ago about the distinction
3 between race consciousness and race neutrality. Are you aware
4 of whether the Texas State legislature statute requires race
5 conscious MWDBE program?

6 A. I don't know.

7 Q. Do you believe that following this statute is --
8 scratch that.

9 When the question says identify each compelling
10 interest, what is your understanding of what a compelling
11 interest is?

12 A. A reason to justify.

13 Q. I know you're not a lawyer, but do you understand the
14 legal significance of saying a compelling interest?

15 A. No.

16 Q. So a reason to justify, is it your belief then that
17 the directive established by the legislature is the reason that
18 justifies the MWDBE program?

19 MR. SILEO: Objection, form.

20 THE DEPONENT: That's how I would interpret it.

21 BY MR. THOMPSON:

22 Q. Do you know what the Texas State legislature
23 considered when it adopted that statute?

24 A. No.

25 Q. How does -- so moving on in that same sentence,

1 stimulating the growth of disadvantaged businesses. How does
2 the MWDBE program stimulate the growth of disadvantaged
3 businesses?

4 A. It offers them an opportunity to participate in the
5 procurement process.

6 Q. If the MWDBE program did not exist, would DBE-
7 certified businesses be allowed to participate in the
8 procurement process?

9 A. Yes.

10 Q. Moving on in that same paragraph, it says, "Afford
11 those disadvantaged businesses a full and fair opportunity to
12 compete for district contracts."

13 How does the MWDBE program allow DBE-certified
14 businesses a full and fair opportunity to compete for district
15 contracts?

16 A. Can you restate your question?

17 Q. Sure. The sentence that I'm reading for says that
18 the MWDBE program affords disadvantaged businesses a full and
19 fair opportunity to compete for district contracts. I'm
20 wondering how it does that.

21 A. One way it does is inviting disadvantaged businesses
22 to participate in procurement processes.

23 Q. Are there other ways it does that?

24 A. I'm not sure.

25 Q. Do you believe that if the MWDBE program did not

1 exist, that DBE-certified businesses would still have a full
2 and fair opportunity to compete for district contracts?

3 A. I'm not sure.

4 Q. Why would they not?

5 A. They may not be aware of the opportunity.

6 Q. Moving further in that same sentence, it -- it says
7 the program furthers the remedial goals and eradicates the
8 effects of prior discrimination in the public procurement
9 process. What are the remedial goals that the MWDBE program is
10 furthering?

11 A. It is my understanding that's in reference to the
12 Texas local government code language that's included in section
13 375.222.

14 Q. So the remedial goals that the program furthers, are
15 those goals established by the Texas State Legislature? Is
16 that --

17 A. That is my understanding.

18 Q. It says, "Eradicate the effects of prior
19 discrimination in the public procurement process." Which prior
20 discrimination is the MWDBE program eradicating?

21 A. Discrimination as determined by the Texas legislature
22 when this government goal was created.

23 Q. Are you aware of any discrimination that the Midtown
24 Management District engaged in?

25 A. No.

1 Q. You've been at the Midtown Management District, I
2 think you said, since 2003. Did I get that right?

3 A. Yes.

4 Q. In your 20 years at the Midtown Management District,
5 are you aware of any claims of discrimination by the Midtown
6 Management District?

7 A. No. Unless this is considered a claim.

8 Q. Are you aware of any claims that -- strike that.
9 When the Midtown Management District lets contracts,
10 are there prime contractors and subcontractors?

11 A. Sometimes.

12 Q. Are you aware of any instances of a prime contractor
13 discriminating against firms?

14 A. No.

15 Q. Are you aware of any subcontracts alleging
16 discrimination by prime contractors?

17 A. No.

18 Q. Okay. I want to introduce the statute that you've
19 been referencing.

20 This will be I think --

21 THE REPORTER: Exhibit 7.

22 (WHEREUPON, Exhibit 7 was marked for identification.)

23 MR. THOMPSON: And I believe the last one.

24 BY MR. THOMPSON:

25 Q. Have you had a chance to review the document?

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1 A. Yes.

2 Q. Have you seen this before?

3 A. Yes.

4 Q. And what is -- what is it?

5 A. It is the Texas Local Government Code Section 375.222
6 that relates to disadvantaged businesses.

7 Q. Now, based on the prior answer of the interrogatory,
8 it's Midtown's contention that this is the compelling interest
9 for the MWDBE program. Is that correct?

10 A. Not a lawyer, so I don't completely understand the
11 term compelling interest.

12 Q. I understand. That's well stated. Is it -- I -- I
13 think when we talked about compelling interest before, I don't
14 want to put words in your mouth, but it was the justification
15 for the program or the reason for its existence.

16 A. That was what I thought it meant. That as I thought
17 more about it, seems to be a legal term that I'm not familiar
18 with.

19 Q. Fair enough. However, in this interrogatory, which
20 you helped craft, the compelling interest identified is that
21 the district followed the directive of the Texas State
22 Legislature. Is that correct?

23 A. I would need to refer back to the previous.

24 Q. Feel free. It would be Exhibit 6, answer
25 interrogatory number 4.

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1 MR. SILEO: Objection, form, asked.

2 THE DEPONENT: Although I was identified as a person
3 who contributed, I did not contribute to that -- that response.

4 BY MR. THOMPSON:

5 Q. Okay. Referring again to Exhibit 7, the statute,
6 section A. I give you a chance to read that. You can let me
7 know when you're done.

8 A. I've read.

9 Q. I think a lot of these phrases are phrases that we
10 just went over in the answer to interrogatory number 4. One
11 thing that isn't present in your answer to interrogatory number
12 4 that is present in this statute, is that a district shall
13 attempt to stimulate the growth of disadvantaged businesses
14 inside its boundaries. Do you see that language in the
15 statute?

16 A. Yes.

17 Q. Do you believe that this statute restricts DBE
18 programs to growing DBEs inside a district's boundaries?

19 MR. SILEO: Objection, form.

20 THE DEPONENT: I'm not sure.

21 BY MR. THOMPSON:

22 Q. What is your understanding of the phrase inside its
23 boundaries?

24 A. The growth of disadvantaged businesses doing business
25 inside these boundaries.

1 Q. Under C -- oh, scratch that.

2 Under D, is that language again, "Eradicate the
3 effects of any prior discrimination." Do you see that?

4 A. Yes.

5 Q. Do you know what the Texas -- excuse me. Do you know
6 what the Texas legislature was attempting to eradicate? That's
7 a horrible question. Strike that.

8 States that, "The DBE programs shall be structured to
9 further remedial goals and shall be established to eradicate
10 the effects of any prior discrimination." Is it your
11 understanding that Midtown needs to identify prior
12 discrimination before it enacts a DBE program?

13 MR. SILEO: Objection, form.

14 THE DEPONENT: That's my understanding.

15 BY MR. THOMPSON:

16 Q. How could Midtown eradicate the effects of prior
17 discrimination without identifying the discrimination?

18 MR. SILEO: Objection, form again.

19 THE DEPONENT: It's my understanding that it was
20 created based on -- to comply with the local government code
21 and the languages in that code.

22 BY MR. THOMPSON:

23 Q. Do you believe this code requires Midtown to identify
24 prior discrimination?

25 MR. SILEO: Objection, form.

1 THE DEPONENT: No.

2 BY MR. THOMPSON:

3 Q. Moving on to subsection C. It directs the board to
4 review its disadvantaged business program on an annual basis.
5 To your knowledge, has Midtown done that?

6 A. The -- in its agreement with the Midtown
7 Redevelopment Authority.

8 Q. I'm sorry, repeat that.

9 A. In its agreement with the Midtown Redevelopment
10 Authority, there is language which assigns the Midtown
11 Redevelopment Authority to review legal requirements. And that
12 document is reviewed annually.

13 Q. Does that document identify discrimination within the
14 district?

15 A. Not to my knowledge.

16 Q. Does that document determine whether there are
17 significant statistical disparities in the public procurement
18 market?

19 A. No.

20 Q. Does that document identify the MWDBE firms that are
21 qualified to undertake work in the district?

22 A. No.

23 Q. Moving to subsection D, "A program established by a
24 district under this section must attempt to remedy any
25 statistically significant disparities that are found to exist."

1 How does the district do that?

2 A. One way is outreach to organizations that target
3 disadvantaged businesses to advertise upcoming procurement.

4 Q. I don't want to misstate your testimony, but I
5 thought I heard you say that the district does not determine
6 whether there are statistically significant disparities. So if
7 they don't know that, how can the outreach remedy that?

8 A. It's -- it's their effort to comply with the Texas
9 local government code, 375.222.

10 Q. The last sentence states, "The program continues only
11 until its purposes and objectives are met as determined by the
12 regular periodic review."

13 How does the district know when the purposes and
14 objectives of the MWDBE program are met?

15 A. I don't know.

16 Q. Okay. I want to move back over to the prior exhibit,
17 Exhibit 6. I may refer again to the statute, so maybe just
18 have that handy, if you need it. Under question 7, the
19 question or the interrogatory asks to identify each specific
20 past violation of the US Constitution or statute that the MWDBE
21 program and/or 10-point bonus is intended to remedy. Actually,
22 I don't want to ask about that question. I want to ask about
23 the next question.

24 "Identify each way the MWDBE program and/or 10-point
25 bonus is narrowly tailored to remedy each violation identified

1 in interrogatory number 8." Do you see that question?

2 A. Yes.

3 Q. Do you see the answer that's on the following page?

4 A. Yes.

5 Q. I want to give you a -- a chance to read that answer
6 before I ask my next question. Just let me know when you
7 finish reading.

8 A. All right. I've read it.

9 Q. Thank you. I want to start just generally with, I --
10 I understand you object to the term bonus, but the 10 points
11 awarded for MWDBE-certified firms, discretionarily awarded to
12 MWDBE-certified firms. How did the district come up with 10
13 points as -- as the proper allocation?

14 A. It was the district's good faith effort to comply
15 with the Texas Local Government Code 375.222 and similar
16 requirements from the City of Houston to meet those
17 requirements.

18 Q. They could have complied with those requirements by
19 awarding 7 points, 15 points, 10 points. What is your
20 understanding of why they settled on 10 points, why the
21 district settled on 10 points?

22 A. It's my understanding that the district felt this was
23 the most effective way to address the history of discrimination
24 of public contractors with ensuring that highly qualified
25 contractors attracted the district of quality goods and

1 services, while not overly disadvantaging anybody.

2 Q. Do you know how they arrived at that number?

3 A. Not specifically.

4 Q. In your 20 years of employment with the district, how
5 long has 10 points been the number?

6 A. I'm unsure.

7 Q. Can you recall any time where it was not 10 points?

8 A. I'd have to review prior procurement documents to
9 confirm.

10 Q. Do you know the individuals who arrived at the 10
11 points?

12 A. Yes.

13 Q. Who are they?

14 A. Previous, I don't recall specifically them by name,
15 but previous Service and Maintenance Committee members, legal
16 counsel, and Midtown staff.

17 Q. Do you recall when that was approximately?

18 A. Each procurement document is reviewed by those
19 persons. So it's at that time when the terms are established.

20 Q. For each invitation to bid?

21 A. Yes.

22 Q. Can you recall any other invitations to bid that did
23 not include 10 points for MWDBE-certified firms?

24 A. I would have to review those documents.

25 THE REPORTER: Say it one more time.

1 THE DEPONENT: I would -- I would have to review
2 those procurement documents. I'm not sure.

3 BY MR. THOMPSON:

4 Q. But here today you can't recall any?

5 A. I can't recall.

6 Q. In that same answer, it mentions the requirements
7 from the City of Houston. Do you have a program to help remedy
8 the effects of prior discrimination on minority and women-owned
9 businesses? Do you see that sentence?

10 A. Yes.

11 Q. What are those requirements from the City of Houston?

12 A. I don't know them specifically, but they -- they do
13 have a MWDBE program, which states what those requirements are.
14 I have to read -- read it.

15 Q. How is Midtown subject to those requirements?

16 A. Midtown is within the City of Houston and they have a
17 service agreement with Midtown Redevelopment Authority, which
18 has a requirement to meet standards of the City of Houston.

19 Q. Does that apply only for certain contracts or does
20 that apply categorically for Midtown?

21 A. I'm not sure.

22 Q. Moving on. On a couple pages further, we start to go
23 into the admissions and I think admission number -- request for
24 admission number 8 asks the district to admit that part of its
25 MWDBE policy, the district awards 10 points to minority only

1 women-owned business enterprises when evaluating bids.

2 It states that it's denied there and then it offers a
3 qualification. I'm a little bit unclear on that qualification,
4 so I want to give you a chance to -- to read it and help
5 clarify it for me. So just let me know when you're ready.

6 A. I've read it.

7 Q. I'm mostly concerned with that first sentence. I
8 understand the district's position that doesn't like to call
9 this a bonus and I'm trying to avoid that here today. Yet the
10 district is still denying the admission by saying that it
11 admits it awards 10 points in the contracting process to
12 businesses that qualify for such points under the district's
13 diversity program. So my first question is, what is -- what is
14 the diversity program?

15 A. Diversity program as -- in this context relates to
16 the MWDBE policy.

17 Q. Okay. And then it states, "Which requires a good
18 faith effort to comply with the district's MWDBE goal." I'm
19 trying to understand what distinction that is trying to draw
20 because the admission asks to admit that 10 points are awarded
21 to minority-owned and women-owned businesses. Sounds like
22 that's admitted, but it states it's denied. I'm not -- I don't
23 think I'm understanding the denial and maybe you could help
24 clarify that for me.

25 A. I'm unable to clarify it. It seems to be some legal

1 language involved that I wasn't involved in.

2 Q. Okay.

3 MR. SILEO: Do you want me to clarify it? Happy to.

4 MR. THOMPSON: I would love you to clarify.

5 MR. SILEO: Okay. So -- so there's a distinction
6 between if -- if you're just a minority under a woman-owned
7 business, you don't get points. You have to be -- meet the
8 other qualifications of the program, which includes the
9 certifications and providing the proper documentation. So it
10 says, "They qualify for such points under the district's
11 diversity program." So it's not just you're a minority under
12 women-owned business.

13 MR. THOMPSON: All right. I'll have to read that
14 back --

15 MR. SILEO: All right.

16 MR. THOMPSON: -- when I'm at home, but thank you for
17 clarifying --

18 MR. SILEO: All right.

19 MR. THOMPSON: -- that for me.

20 BY MR. THOMPSON:

21 Q. So on -- on admissions 10 to 11, we're talking about
22 the definition of minority person found in the Houston code.
23 Do you see those two admissions in the answers that are
24 provided?

25 A. Excuse me, which numbers?

1 Q. 10 and 11. Actually, let's just start with -- let's
2 do 11. You don't need to worry about 10. So if you could read
3 question 11 and the district's answer. Let me know when you're
4 ready.

5 A. I've read it.

6 Q. Can you explain why the district uses Houston's
7 definition of minority person?

8 A. I cannot.

9 MR. THOMPSON: Okay. Let's take another five-minute
10 break. I think we're close to wrapping up.

11 MR. SILEO: Absolutely.

12 THE REPORTER: We are off the record. It is 12:17
13 p.m.

14 (WHEREUPON, a recess was taken.)

15 THE REPORTER: We are on the record. It is 12:21
16 p.m.

17 MR. THOMPSON: Plaintiff has concluded its direct
18 examination.

19 MR. SILEO: Okay. I'll reserve my questions.

20 THE REPORTER: Okay. Very good.

21 Mr. Thompson, would you like to order the original
22 transcript?

23 MR. THOMPSON: Yes, please.

24 THE REPORTER: Very good.

25 And, Mr. Sileo, would you like to order a copy?

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MR. SILEO: Absolutely.

THE REPORTER: And, Mr. Dillard, would you like to
order a copy?

MR. DILLARD: Yes, please.

THE REPORTER: Very good.

We are off the record. It is 12:21 p.m.

(WHEREUPON, the deposition of MARLON MARSHALL was
concluded at 12:21 p.m.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LANDSCAPE CONSULTANTS OF TEXAS, INC.,

and METROPOLITAN LANDSCAPE MANAGEMENT, INC.,

Plaintiffs,

v. Civil Action No. 4:23-cv-03516

CITY OF HOUSTON, TEXAS, and

MIDTOWN MANAGEMENT DISTRICT,

Defendants.

REPORTER'S CERTIFICATION
DEPOSITION OF MARLON MARSHALL
JUNE 12, 2024

I, Barbara Molina Court Reporter, hereby certify to the following:

That the witness, Marlon Marshall, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on June 28, 2024, to the witness or to the attorney for the witness for examination, signature and return to NAEGELI DEPOSITION AND TRIAL by July 18, 2024;

1 That the amount of time used by each party at the
2 deposition is as follows:

3 JOSHUA THOMPSON - 1hr 48min

4 ANASTASIA BODEN - 0hr 0min

5 BRET J. SILEO - 0hr 0min

6 JARETT J.P. DILLARD - 0hr 0min

7 That pursuant to information given to the deposition
8 officer at the time said testimony was taken, the following
9 includes counsel for all parties of record:

10 JOSHUA THOMPSON ATTORNEY FOR PLAINTIFF

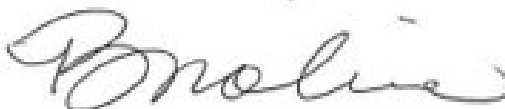
11 ANASTASIA BODEN ATTORNEY FOR PLAINTIFF

12 BRETT J. SILEO ATTORNEY FOR DEFENDANT

13 JARETT J.P. DILLARD ATTORNEY FOR DEFENDANT

14 I further certify that I am neither counsel for, related
15 to, nor employed by any of the parties or attorneys in the
16 action in which this proceeding was taken, and further that I
17 am not financially or otherwise interested in the outcome of
18 the action.

19 Certified to by me this 28th day of June, 2024.

20
21
22 

23 Barbara Molina 818
24
25

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1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4
5 LANDSCAPE CONSULTANTS OF TEXAS, INC.,

6 and METROPOLITAN LANDSCAPE MANAGEMENT, INC.,

7 Plaintiffs,

8 v. Civil Action No. 4:23-cv-03516

9 CITY OF HOUSTON, TEXAS, and

10 MIDTOWN MANAGEMENT DISTRICT,

11 Defendants.

12
13 FURTHER CERTIFICATION UNDER RULE 203 TRCP14 The original deposition of Marlon Marshall ____ was
15 ____ was not returned to the deposition officer.16 If returned, the attached Changes and Signature page
17 contains any charges and the reasons therefor;18 If returned, the original deposition was delivered to
19 _____, custodial attorney;20 That _____ is the deposition officer's charges to
21 _____, attorney for the _____, for
22 preparing the original deposition transcript and any copies of
23 exhibits;24 That the deposition was delivered in accordance with Rule
25 203.3, and that a copy of this certificate was served on all

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parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of _____, 2024.

Barbara Molina 818

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1 Date: 06/12/2024 Assignment #: 75250

2 Deponent: Marlon Marshall 30(b)(6)

3 Case: LANDSCAPE CONSULTANTS OF TEXAS vs CITY OF HOUSTON

4
5 ATTORNEY - TRANSCRIPT ENCLOSED:

6 signature of your client is required. Please have your client
7 make any corrections necessary. Sign the Correction Sheet
8 where indicated. Forward a COPY of the executed Correction
9 Sheet directly to the attorney(s) listed below. (The Address(es)
10 can be found on the Appearance page of the deposition.) Also,
11 send a COPY of the executed Correction Sheet to our corporation.
12
13
14
15
16
17
18
19

20 C C:Naegeli Deposition and Trial
21
22
23
24
25

Deposition of: Marlon Marshall 30(b)(6) Date: 06/12/2024
Regarding: LANDSCAPE CONSULTANTS OF TEXAS vs CITY OF HOUSTON
Reporter: Barbara Molina

Please make all corrections, changes or clarifications to your testimony on this sheet, showing page and line number. If there are no changes, write "none" across the page. Sign this sheet and the line provided.

Page	Line	Reason for Change
------	------	-------------------

[illegible]

Signature: _____

Marlon Marshall 30(b)(6)

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DECLARATION

Deposition of: Marlon Marshall 30(b)(6) Date: 06/12/2024

Regarding: LANDSCAPE CONSULTANTS OF TEXAS vs CITY OF HOUSTON

Reporter: Barbara Molina

I declare under panalty of perjury the following to be true:

I have read my deposition and the same is true and accurate save and except for any corrections as made by me on the Correction Sheet herein.

Signed at _____, _____
on the _____ day of _____, 20____.

Signature: _____

Marlon Marshall 30(b)(6)

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